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PROPOSED PLAN TO ENHANCE COMPLIANCE THROUGH INCREASED TRAINING, SUPORT AND ENFORCEMENT

APPROACH AND GOALS

The Board has directed Board staff (staff) to review its use of program resources devoted to achieving compliance with the Integrated Waste Management Act (Act) and its current approach to supporting local governments implementing the Act. The Board recently adopted twelve (12) Strategic Directives at its February 13, 2007 meeting to provide overall guidance to this effort. These Strategic Directives support the protection and preservation of public health and safety, our resources, and our environment and the implementation of the Integrated Waste Management Act related to ensuring compliance with applicable State standards and permit conditions.

The LEA/Board *Compliance* Partnership, including the LEA round tables and other leadership forums, provides the optimal framework to develop a Compliance Strategy to implement the following Strategic Directives 4.1, 4.3, 8.3, 8.8, and portions of 12.3. These Strategic Directives outline the Board's goals specifically to solid waste facility compliance throughout the state.

The purpose of this paper and the ensuing process is to:

1. Share the Board's overall vision and Strategic Directives (and related sub-directives) related to solid waste facility compliance with LEAs and other stakeholders.
2. Share and receive comments on each Strategic Directive baseline, performance criteria (metrics), annual targets and key activities.
3. Outline the current authorities and common enforcement steps, actions, and priorities taken by LEAs and Staff; and seek modification or additions, if necessary. (Attachment 1)
4. Review key concepts in "Gaining Compliance and Enforcement Partnership Issue Paper" (developed in partnership with LEA's in 2004 and discussed at the 2004 LEA Conference), to see if any additional ideas need to be incorporated into the compliance strategy to meet the Strategic Directives. (Attachment 2)
5. In coordination with LEAs, develop a baseline of facilities chronically violating state statutes and regulations by updating the Inventory List and the Enforcement Order list that currently exist. (Attachment 3 and 4) Additionally, staff propose to work with the LEAs to develop a case-by-case strategy to move facilities off the Inventory.
6. Share and receive comments on Proposed Compliance Strategies for meeting the Strategic Directives. The proposed compliance strategies include:
 - a. Reducing the number of facilities listed on the Board's [Inventory of Solid Waste Facilities Which Violate State Minimum Standards](#).
 - b. Provide inspection and enforcement training, assistance and oversight to LEAs to ensure that State programs are effectively implemented
 - c. Methodology the Board uses to provide oversight of the LEAs enforcement activities
 - d. Increase Number of Random and Independent Audits

STRATEGIC DIRECTIVES

Strategic directives that support compliance with applicable state minimum standards and permitting standards, specifically Strategic Directives 4.1, 4.3, 8.3, 8.8, and 12.3, are listed below. Each Strategic Directive's baseline, performance criteria, annual target and key activities are also included.

Note to LEAs: Staff is soliciting LEA comments on the strategic directive metrics. These metrics are targets established for attainment by December 2008. They have been developed in conjunction with the program enhancements that are discussed later in this document. After review of the program enhancements please provide comment on the baseline, metrics, annual targets and key activities for each sub-directive.

SD-4. Landfill Management

It is a core value of the Board to protect public health and safety and preserve resources. Accordingly, the Board will assure safe and adequate landfill disposal and long-term maintenance of landfills.

Specifically, the Board will:

4-1. Assure that 100 percent of active landfills meet state minimum standards as well as permit terms and conditions.

This sub-directive addresses a core goal of the Integrated Waste Management Act, protecting public health and safety through environmentally safe disposal. The Board must monitor compliance over time to ensure the requirements continue to be maintained. This sub-directive is closely related to SD-4.3 and SD-8.3 and SD-8.8.

- **Baseline**

The baseline is the percentage of landfills with violations of the state minimum standards and/or permit terms and conditions as of December 2006. Of the 146 active landfills, nine are listed on the Inventory and 13 have Active Enforcement Orders.

- **Metrics or Performance Criteria**

The Board will measure the compliance rates by active landfills.

- **Annual Targets**

Five percent improvement in landfill compliance rates by December 2008.

- **Key Activities**

Establish landfill performance triggers through coordinated staff efforts to:

- Update SWIS database and continue to track status of evaluation and enforcement activities through this database;
- Work with LEAs to ensure that solid waste issues are identified;
- Obtain Board concurrence on compliance targeting strategy;
- Identify and provide training and technical assistance to meet the needs of LEAs;
- Conduct inspections; and take enforcement actions.

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4-3. Reduce the number of facilities on the noncompliance ("[Inventory](#)") list.

The focus of this sub-directive is to reduce the number of landfills on the Inventory of Non-complying Facilities (Inventory). The Inventory is the formal repository for facilities with chronic violations of the State Minimum Standards and "listing" triggers certain enforcement actions by the LEAs. This sub-directive is closely related to SD-4.1 and SD-8.3.

- **Baseline**

The baseline is 13 landfills on the Inventory as of December 2006.

- **Metrics or Performance Criteria**

The Board will track the number of landfills on the Inventory.

- **Annual Targets**

The Board will reduce the number of landfills currently on the Inventory by four by December 2008.

Staff needs to coordinate internally and work with LEAs to ensure the SWIS databases is up to date, issues are identified, inspections are conducted and appropriate orders are issued. These activities will result in an increase in landfill compliance rates by December 2008.

- **Key Activities**

Establish landfill performance triggers through coordinated staff efforts to:

- Update SWIS database and continue to track status of evaluation and enforcement activities through this database;
- Work with LEAs to ensure that solid waste issues are identified;
- Obtain Board concurrence on compliance targeting strategy;
- Identify and provide training and technical assistance to meet the needs of LEAs;
- Conduct inspections; and take enforcement actions;
- Clarify whether the number of Closed, Illegal, and Abandoned (CIA) sites in violation where the LEA requests investigation and enforcement assistance from the CIWMB.

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SD-8. Enforcement/Permitting

It is a core value of the Board to manage and mitigate the impacts of solid waste and tires on public health and safety and the environment by ensuring compliance with regulations and state minimum standards, through integrated and consistent permitting, inspection, and enforcement efforts.

- 8-3. Ensure that 100 percent of all active solid waste and tire facilities meet state minimum standards and permit terms and conditions, and that they are in compliance with federal and state waste management laws.**

This sub-directive addresses a core goal of the Integrated Waste Management Act; protecting public health and safety through environmentally safe disposal. The Board must monitor compliance over time to ensure the requirements continue to be maintained. This sub-directive is closely related to 4.1, 4.3 and 8.8

- **Baseline**

The baseline is the percentage of active solid waste and tire facilities (other than landfills) in compliance with state minimum standards, and permit terms and conditions. Of the 830 permitted solid waste and tire facilities (other than landfills), 17 are listed on the Inventory and 65 have Active Enforcement Orders in SWIS and Waste Tire Management System (WTMS) database.

- **Metrics or Performance Criteria**

The Board will track the number of active solid waste and tires facilities (other than landfills) that comply with state minimum standards, and permit terms and conditions.

- **Annual Targets**

Five percent improvement in active solid waste and tire facilities (other than landfills) compliance rates by December 2008.

- **Key Activities**

Establish facility performance triggers for facilities other than landfills through coordinated staff efforts to:

- Update SWIS and WTM databases and continue to track status of evaluation and enforcement activities through these databases;
- Work with LEAs to ensure that solid waste and tire issues are identified;
- Obtain Board concurrence with a targeted compliance strategy that includes criteria;
- Identify and provide training and technical assistance to meet the needs of tire and solid waste LEAs;
- Conduct inspections; and
- Take enforcement actions.

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- 8-8. As part of enhancing the Board's enforcement functions, increase the number of independent and random audits and of field investigations of solid waste facilities. Begin by auditing 2 percent of facilities per year and increase to a total of 10 percent per year.**

This sub-directive addresses a core goal of the Integrated Waste Management Act, protecting public health and safety. To enhance enforcement the CIWMB will increase monitoring effects to ensure facilities meet requirements. This sub-directive is closely related to 4.1, 4.3 and 8.3

- **Baseline**

The baseline is the number of CIWMB inspections for all permitted solid waste facilities (other than pre-permit and 18-month inspections) in 2006 included in the SWIS database.

- **Metrics or Performance Criteria**

The number of CIWMB inspections for all permitted solid waste facilities (other than pre-permit and 18-month inspections) in a calendar year included in the SWIS database will serve as a metric.

- **Annual Targets**

Increase by 2% the number of facilities inspected by December 2008, and report the results to the Board in February 2009. Achieve a 10% increase in facility inspections by 2013.

- **Key Activities**

- The initial focus will be on increasing inspections for chronic violators.
- Additional inspections will be focused where issues have been raised.
- Activities will include:
 - Develop criteria for selecting facilities for inspection;
 - Conduct inspections;
 - Evaluate programs, opportunities to improve efficiency, and the need for additional resources to perform inspections; and
 - Report to the Board.

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12.3 - Develop a comprehensive training program for the CIWMB's LEA regulatory partners to ensure the safe management of solid waste by January 2008.

This sub-directive focuses on the mandated training provided to LEAs and others relative to issues associated with solid waste facilities. Linkage to SD 4.1, 4.2, 4.3 and SD 8.3

- **Baseline**

The baseline is the current Training Curriculum for LEAs and operators which include specific training based on an annual needs assessment and other indicators relative to compliance issues. The Annual Conference that was established in 1997 per a charter with CCDEH and CIWMB also includes multiple training opportunities for LEAs, tire compliance staff and operators. The current training schedule can be found at <http://www.ciwmb.ca.gov/LEATraining/MstrSchd.htm>

- **Metrics or Performance Criteria**

The overall number of LEAs, operators, and staff and other stakeholders that attend and complete the offered training courses will be the measure for the training program. Measurable changes in operator compliance and regulatory process efficiencies and effectiveness that result from training activities will be identified and tracked.

- **Annual Targets**

Staff will continue to conduct training needs assessments for LEAs and tire compliance and CIWMB staff, as well as operators. The training curriculum and schedule will be adjusted to match the identified needs. Training delivery will also be tied to LEA performance, as well as any changes in the waste management infrastructure or regulatory structure.

- **Key Activities**

Between June and December 2007, twelve (12) training classes will be conducted throughout the state covering Health & Safety issues; State Minimum Standards for Landfills, Compost sites and Transfer/Processing Facilities; Landfill Gas Monitoring, Solid Waste Facility Field Tours; and Conflict Resolution. It is expected that over 375 LEAs and CIWMB staff and 250 industry/operator staff will attend the training sessions.

Note to LEAs: Staff is still developing more detailed information and LEAs will have additional opportunities for input on training.

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CRITERIA FOR SELECTING APPROPRIATE ENFORCEMENT ACTIONS

Local Enforcement Agencies (LEA) have the primary enforcement authority over solid waste facilities. The Board certifies LEA's which includes finding that the jurisdiction's Enforcement Program Plan (EPP) is consistent with regulations. The EPPs outline a progressive enforcement process where violations are first noted on an inspection report and may finally result in penalties up to \$10,000 per day per violation. For details regarding the Background and Overview of Enforcement Process and Authority please see Attachment 1.

EPPs outline how many LEAs first pursue compliance. If violations persist or are severe, then formal enforcement actions should be taken. Many LEAs and the Board's EA have used the following criteria, listed in more or less priority order, in determining an appropriate enforcement action:

- a. Degree of risk to public health and safety or the environment;
- b. History of violations;
- c. Degree of cooperation or recalcitrance exhibited by the owner/operator;
- d. Culpability of the operator;
- e. Whether the circumstances leading to the noncompliance have been corrected;
- f. Whether the violations are likely to continue;
- g. Whether the violation can be remediated;
- h. Need to take immediate cleanup action; and
- i. Any economic benefit realized by the owner/operator as a result of the noncompliance.

Note to LEAs: Staff is interested in LEA input on these criteria. Should a priority be established within the criteria? Should certain enforcement actions be taken if a violation(s) falls within criteria? For example if a violation falls within criteria "a." should a specific enforcement action result? Or, if a violation falls within criteria "i" should a fine or penalty be assessed that addresses the economic benefit?

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KEY CONCEPTS IN “GAINING COMPLIANCE AND ENFORCEMENT PARTNERSHIP ISSUE PAPER”

This 2004 issue paper, developed by LEA representatives and the Board, contains several key concepts. (Attachment 2) Many of these have been incorporated into the compliance strategies to achieve the Strategic Directives.

1. ***Compliance first approach.*** This concept emphasizes preventing violations through training and early assistance. The proposed compliance strategies to achieve the Strategic Directives, taken as a whole, also use this approach.
2. ***Enforcement/penalty approach.*** This concept emphasizes taking enforcement action or applying penalties when the cooperative efforts have not succeeded. The proposed compliance strategies to achieve the Strategic Directives, taken as a whole, also use this approach. The key issue is when to move to enforcement and whether regulation changes are needed to specify enforcement actions and timelines. Board staff anticipates further discussions with LEAs on this topic as we develop more detailed compliance strategies. In addition, the Board continues to seek statutory changes to allow increased enforcement and penalties.
3. ***Measuring compliance.*** This concept looks at how to measure effectiveness of compliance through various methods, including time and resources needed and an assessment of effectiveness of various activities and degree of compliance over time. The Strategic Directive Metrics establish program performance goals. Staff asks for LEA input on the metrics.
4. ***Lack of publicity that could aid local enforcement efforts.*** This concept suggests that publicity may help deter illegal and illicit operations. Board staff, LEA's and other local governments officials developed an Illegal Dumping Task Force in 2006 and continue to implement suggestions to combat illegal dumping/operations.
5. ***Need for increase in formal education and training.*** This concept requests additional LEA training at facilities other than landfills. Strategic Directive 12.3 includes a focus on LEA training. Board staff is working on a plan to achieve Strategic Directive 12.3 on a separate time frame. LEAs will continue to have an opportunity to provide input on training.
6. ***Need for increased multi-media coordination when appropriate.*** This concept promotes an increase in coordination between all agencies that ensure that solid waste facilities operate in compliance with the law. The proposed compliance strategies to achieve the Strategic Directives include identifying why facilities are not in compliance and working with LEAs to resolve these issues. Other agencies may need to be part of the discussion. Board staff anticipates further discussions with LEAs on this topic as we develop more detailed compliance strategies

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PROPOSED COMPLIANCE STRATEGY FOR ENHANCED ENFORCEMENT EFFORTS TO MEET STRATEGIC DIRECTIVES

1. *Reduce the number of facilities listed on the Board's [Inventory of Solid Waste Facilities Which Violate State Minimum Standards](#) (Inventory) and the number of facilities violating Solid Waste Facility Permit conditions.*

This effort will continue with the added focus of Strategic Directives 4.1, 4.3 and 8.3, to assure 100% of active landfills meet SMS as well as Solid Waste Facility Permit (SWFP) terms and conditions and reduce the number of facilities on the Inventory. The Inventory lists those facilities that are in violation of SMS and does not include solid waste facilities that are in violation of the terms and conditions of their SWFP. A separate tracking mechanism is outlined below for tracking SWFP violations.

Board staff's compliance target strategy to enhance this program includes the following:

- Establish a baseline and enhance monitoring and updating Solid Waste Information System (SWIS) database for facilities in violation.
- Identify needed enhancements to SWIS database, including electronic filing, and automated notification, to ensure accurate and timely reporting and tracking.
- Ensure all sites that should be on the Inventory are listed and appropriate notifications are current.
- Ensure that all sites on the Inventory are on a compliance schedule or enforcement order as required by regulation.
- Ensure all enforcement orders are current and up-to-date data is in SWIS.
- Initiate and maintain a list of facilities not complying with SWFP terms and conditions and illegal solid waste facilities and ensure that the LEA is taking appropriate enforcement actions after consecutive violations.
- Refer long term violations for landfill gas violations to appropriate Landfill Gas Coordinator for technical assistance. Refer applicable cases to the Compliance Loan Program.
- For short-term violations, meet with LEA staff to identify why the violation(s) is not getting resolved, and provide potential solutions and determine next steps.
- Set firm compliance schedule dates and inform the operator that the Board will be supporting the LEA on follow-up enforcement efforts.
- Provide LEA with assistance on writing enforceable orders or pursuing other enforcement options.
- If all the above efforts do not result in the LEA taking appropriate enforcement as outlined above, then the Board will initiate 14 CCR Section 18350 procedures. The first step in this process is noticing the LEA that the Board may take over the enforcement process. (Attachment 5)

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2. *Provide inspection and enforcement training, assistance and oversight to ensure that State programs are effectively implemented.*

Training

Strategic Directive 12.3 requires the development of a comprehensive training program for the Board's LEA regulatory partners to ensure the safe management of solid waste by January 2008. As enforcement strategies outlined in this item are implemented Compliance Evaluation and Enforcement Division (CEED) staff will participate in meeting training needs by coordinating with Permitting and LEA Support Division (PLEASD) and Cleanup, Closure and Financial Assurance Division (CCFAD) to:

- Make recommendations to be incorporated into the comprehensive training program,
- Make referrals as needed for one-on-one assistance and training and general classroom training needs, and
- Develop and provide information on the web for common compliance issues, successful strategies to resolve compliance issues, and other assistance.

Note to LEAs: Staff is still developing more detailed information and LEAs will have additional opportunities for input on training.

Assistance and Oversight

The PLEASD will monitor all sites by reviewing monthly inspection reports. Through this process and a notification procedure yet to be developed, staff will identify all sites with two or more consecutive violations of SMS violations or a violation of the SWFP and refer the sites to the CEED. The noncompliant situation will be prioritized as follows:

A. Solid Waste Facility Permit and State Minimum Standard Violation(s) that have Immediate Public Health and Safety Threat (PH&S) and /or illegal solid waste facility or situations of substantial economic gain: When staff identify that one or more of these conditions exists, staff will take the following steps.

- Communicate with the LEA, other applicable agencies (e.g., fire department), and owner/operator to determine the immediate actions that can be taken while compliance is being attained.
- Work with the LEA to develop a compliance schedule (e.g., Notice and Order) and provide LEA with examples and assistance.
- Track owner/operator's progress to meet the timeframes provided in the Notice and Order. If the owner/operator is not complying with the Notice and Order, assist the LEA in pursuing the actions listed in the Notice and Order (e.g., civil penalties).
- If all the above efforts do not result in the LEA taking appropriate enforcement as outlined above then the Board will initiate 14 CCR Section 18350 procedures. The first step in this process is noticing the LEA that the Board may take over the enforcement process.

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B. Other Solid Waste Facility Permit and State Minimum Standard Violation(s):
Facilities violating SWFP conditions and SMS will be second priority where there is no immediate threat or economic gain issues. As time allows staff will conduct the following steps to assure compliance:

- Follow the Inventory process outlined for landfills with SMS violations.
- Work with the LEA to develop a compliance schedule (e.g., Notice and Order) and provide the LEA with examples and assistance.
- Track owner/operator's progress to meet the timeframes provided in the Notice and Order. If the owner/operator is not complying with the Notice and Order, assist the LEA in pursuing the actions listed in the Notice and Order (e.g., civil penalties).
- If all the above efforts do not result in the LEA taking appropriate enforcement as outlined above then the Board will initiate 14 CCR Section 18350 procedures. The first step in this process is noticing the LEA that the Board may take over the enforcement process.

Board staff propose to focus our assistance based on the severity or complexity of the situation. Priorities will be determined over time.

To assist the LEA with their enforcement proceedings, Board staff may send correspondence to an owner/operator that fails to comply with the Notice and Order, stating that Board staff will continue to support the LEA with their enforcement action until compliance with the Notice and Order has been met

Developing a Baseline of Non-complying Facilities

CEED staff is in the process of working with the LEAs to follow-up on the status of the enforcement orders, compliance schedules, and sites that are on the Inventory to update the SWIS database. Once this is completed, staff will coordinate with the LEA to determine if enforcement orders need to be amended, reissued, or if the LEA is pursuing the actions listed in the enforcement order (e.g., civil penalties). In some cases, the owner/operator has appealed the enforcement order to the local hearing panel/hearing officer, which stays the effect of the enforcement order until the date of the completion of all administrative appeals, unless the condition poses an imminent and substantial threat to the public health and safety or the environment (PRC 45017).

For reference, Attachment 3 is a list of the sites that are currently on the Inventory and Attachment 4 is a list of solid waste facilities under an active enforcement order (based on the SWIS database).

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3. *Increase Number of Random and Independent Audits*

LEAs are responsible for inspecting facilities and operations on a monthly or quarterly basis depending on the type of activity. Board staff is responsible for inspecting solid waste landfills every 18 months and focused inspections as needed. The Board has directed staff to conduct "pre-permit" inspections of all facilities that are in the process of obtaining a new, revised permit.

- a. CEED staff will conduct inspections (audits) of solid waste handling activities, including transfer stations, composting activities, construction & demolition and inert debris activities to evaluate compliance with applicable SMS and SWFP terms and conditions. CEED staff's inspections of such activities along with the mandated 18-month inspections of solid waste landfills and transformation facilities (PRC 43220) will enhance the Board's efforts to determine if all active solid waste handling activities are being operated in compliance with SMS and SWFP terms and conditions. In addition, if a solid waste handling activity is not operating in compliance with SMS and/or SWFP terms and conditions, Board staff will ensure that the LEA/EA is taking appropriate enforcement action to resolve any violation(s).

At the August 14, 2007 Board Meeting, the Board directed staff to monitor the Nursery Products Hawes Composting Facility, San Bernardino County during construction and start-up of the operation and report back to the Board. These inspections are an example of Staff's increased inspection activity designed to meet Strategic Directive 8-8.

- b. Additionally, inspections will be conducted using the following proposed priority:
 - i. Known public health and safety threat
 - ii. Complaints
 - iii. ADC Inspections:
 1. No SWFP approval
 2. Complaints
 - iv. Facilities (other than landfills) that meet the following criteria:
 1. Site has sensitive receptors
 2. Site has increased fire threat (large green waste/wood waste sites)
 3. Site never had a state inspection
 4. Site is listed on the Inventory and/or is under an enforcement action by the LEA
 5. Site is scheduled to come off the Inventory.

Note to LEAs: Staff solicits LEA comment on this inspection priority. Are they in the correct order? Should other factors be considered?

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4. *LEA Performance Evaluation Process to enhance Solid Waste Enforcement*

The Strategic Directives focus on improving compliance of facilities. The optimal way of achieving this is through improving the Partnership. Therefore, the Staff efforts to collaborate with LEAs on program implementation issues and to provide assistance and training to help improve LEA performance is paramount to the success of the Strategic Directives.

Currently, the LEA evaluation process focuses on identifying deficiencies in a LEA program by reviewing the LEA's performance over a three year period. This process provides information about situations only after the insufficiency has occurred. Staff believe the most effective way to achieve excellent performing LEAs is through earlier problem discovery followed by technical assistance and training, as well as other program support. The LEA Evaluation Trigger Process describes the steps that the Board takes in order to resolve a problem early (Attachment 6). If problems continue the Process may result in an early LEA Evaluation, a workplan or other actions in an effort to improve LEA program performance. Given the change in Board's organization, CEED's LEA Evaluation section proposes to work with other divisions to fully implement the LEA Performance Triggers process and establish business practices to ensure a consistent implementation of the process. The following existing LEA Performance Triggers outline the criteria for identifying potential LEA performance issues. These criteria are being assessed by each Waste Compliance and Mitigation Program (WCMP) division to determine specific thresholds and the business practices that may be required for possible modifications to the triggers. LEA input on clarifying the following evaluation triggers is being solicited:

A. Criteria for Early Identification of Possible LEA Program Deficiencies /LEA Performance Triggers

A. INSPECTION PROGRAM TRIGGERS

1. Are permitted, illegal, inactive, abandoned, and exempt sites inspected according to the required regulatory frequency?
2. Does the LEA send inspection reports to the CIWMB within 30 days?
3. Does the LEA represent inspections correctly?
4. Does the LEA fill out inspection forms correctly?
5. If there are written complaints, is the LEA following up appropriately?

B. ENFORCEMENT PROGRAM TRIGGERS

1. If any of the LEA's sites are on the Inventory, has the LEA issued a compliance schedule within 15 days and is following up appropriately?
2. The LEA may not be taking appropriate enforcement action.
3. Is the LEA writing enforcement orders correctly per 14 CCR Section 18304?
4. Is the LEA enforcing orders?

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C. PERMIT PROGRAM TRIGGERS

1. Is the LEA submitting complete and/or correct packages per 27 CCR Section 21685 and for tiered permit process?
2. Are permit review reports and reissuances prepared adequately and submitted as required?
3. Is the LEA preparing and issuing permits/RFI amendments according to the time frames?
4. Is the LEA identifying and pursuing permits for active unpermitted facilities?
5. Is the LEA properly processing owner/operator changes and/or RFI amendments per 27 CCR Sections 21665 and 21670?
6. Is the LEA pursuing permit revisions as identified in the permit review report or during inspections?
7. Is the LEA providing evidence of the required findings for permit/CEQA/RFI amendments correctly?

D. CLOSURE PROGRAM TRIGGERS

1. Have sites within the LEA's jurisdiction met applicable closure/postclosure requirements?
2. Are closed sites within the jurisdiction inspected quarterly or at an approved Site Identification Process (SIP) frequency?
3. Are any closed sites **not** maintaining compliance with closure/postclosure requirements as reported on closed site inspection forms?
4. Are appropriate enforcement actions taken for facilities not complying with closure regulations?
5. Are any sites in the LEA's jurisdiction listed for non-compliance with closure requirements?
6. Is the LEA assessing closed, illegal, and abandoned sites that need to be investigated?

E. CERTIFICATION PROGRAM TRIGGERS

1. Are there any changes in the designation or responsibility of an LEA that may result in a conflict of interest?
2. Is the LEA maintaining the staff technical expertise and levels identified in its EPP?
3. Does the current budget indicate adequate resources?
4. Is the EPP updated annually as required?
5. Are training requirements being met?
6. Is the EPP facility/site enumeration consistent with SWIS? If not, Certification staff will forward discrepancies to the appropriate PLEASD or Closure staff contacts to reconcile SWIS with the LEA's updated information.

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B. Early LEA Performance Evaluations to enhance SWF Enforcement

If the LEA Performance deficiencies are not resolved by the above process, then the Board may initiate an early LEA Evaluation and put the LEA on a workplan. The standards for LEA performance and evaluation are described in more detail in Attachment 1.

C. Other LEA Performance Remedies to enhance SWF Enforcement

The Board has several options to resolve severe LEA performance issues if needed. Staff propose the following criteria to determine if an LEA Performance case rises to a severe case:

1. The LEA's performance did not improve after Steps A (Early Identification of Triggers) and B (Early LEA Performance Evaluation) where implemented;
2. The LEA is not responsive to LEA evaluations and workplans.
3. Past administrative remedies, such as office hearings, to improve LEA performance have failed.

Specifically, the following actions (PRC Sections 43216.5 and 43214, and 14 CCR Section 18087) and their timing will be evaluated as possible options for severe LEA Performance deficiencies:

- The Board may establish a schedule and probationary period for improved LEA performance (PRC Section 43216.5). This period allows due process for the LEA to accomplish performance objectives without direct Board intervention on a local level.
- The Board may assume partial responsibility for specified LEA duties (PRC Section 43216.5). Under this option, the Board considers partial de-certification, full de-certification, or withdrawal of designation approval. This action would result in direct Board involvement on a local level. The Board may assume local enforcement agency responsibility on a site/facility basis, on one or more certified LEA duties, or on all LEA certification duties. Full de-certification and withdrawal of designation approval results in the Board becoming the enforcement agency for the jurisdiction. Statute allows the Board to recover its expenses when acting in any of these capacities.
- The Board may conduct more frequent inspections and evaluations (PRC Section 43216.5).
- The Board may implement any other measures which it determines to be necessary to improve LEA compliance (PRC Section 43216.5).
- The Board may take any actions it determines to be necessary to ensure LEAs fulfill their obligations (PRC Section 43216.5).
- If the lack of LEA performance has contributed to significant non-compliance with state minimum standards at solid waste facilities, the Board shall withdraw its approval of designation (PRC Section 43214(c)).

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Only when there is a significant threat to the public health and safety or the environment and the LEA is unresponsive to the Board's request to take steps to protect the public health and safety, will the Board staff recommend that the Board apply an "Urgency Step". In this situation, the Board shall, within 10 days of notifying the LEA, become the enforcement agency until another local agency is designated and certified (PRC Section 43214(c)). To date, this step has not been used.

LEA Note: Staff would like to hear LEA views regarding what constitutes an urgency step. Another process in regulations (14 CCR Section 18350) allows for the Board to take action at a facility and as a result, would trigger a review of the situation leading to the Board's action including the reasons behind the LEA's inability to take that same action. LEA input is needed on the timing and circumstances of when it is appropriate to use this regulatory process.

NEXT STEPS

An enforcement strategy to enhance compliance and accomplish the Board's Strategic Directives will be finalized for presentation to the Board after input and discussion with LEAs. Staff is still investigating issues such as status of all enforcement orders, and those results will be folded into future recommendations on how to implement the proposals. Staff proposes the following schedule:

- September 2007
 - Discuss proposal at LEA Roundtables
 - Discuss at Enforcement Advisory Council meeting
- September-December 2007
 - Staff reviews all current enforcement orders corrective work plans associated with the Inventory and discusses in detail with LEAs regarding outdated orders and/or the need for amendments
 - Staff establishes business practices for enhanced use of the LEA Performance Trigger Process and providing additional assistance to LEA on work plans.
- October 2007
 - Staff presents overview of the plan at the October Board Committee Meeting
 - Staff presents overview at LEA annual conference
- November 2007
 - Provides an update at LEA Roundtables
- February/March 2008
 - Discussion item at Board Committee
 - a. Identify need for regulatory or statutory changes
- Program Director updates at Permitting and Compliance Committee, monthly as information is available.

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There may be additional activities related to achieving the Strategic Directives that are more related to training, permitting facilities or closure of facilities. To the extent possible, these will be added to this overall timeframe. Some activities may be on a different timeline.

ATTACHMENTS

1. Background and Overview of Enforcement Process and Authority
2. Gaining Compliance and Enforcement Partnership Issue Paper Inventory of Solid
3. Inventory List of Waste Facilities Which Violate State Minimum Standards as of August 28, 2007.
4. List of Solid Waste Facilities under an Active Enforcement Order as of August 28, 2007.
5. Title 14, California Code of Regulations, Section 18350 Flowchart
6. Triggers Flowchart and Questions
7. Inventory of Solid Waste Facilities Which Violate State Minimum Standards Flowchart.

INSTRUCTIONS FOR COMMENTING ON THIS DOCUMENT

You can provide comments verbally at the August/September LEA Roundtables or the Enforcement Advisory Council Meeting (September 25, 2007), or submit comments via e-mail to ivankeke@ciwmb.ca.gov. Please submit any comments by Wednesday, September 26, 2007.

An electronic version of this plan will be sent out via an all LEA e-mail. You will also receive all LEA e-mails on future products and activities related to enhanced enforcement.

Please note the CIWMB will be discussing this plan at the Permitting and Compliance Committee on October 9, 2007. LEAs and facility operators are encouraged to participate/listen to the item.